

CITY OF GLENDALE

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN THAT the Glendale City Council will hold a public hearing on May 24, 2016 at 6:00 p.m. in the Glendale Council Chambers, 5850 West Glendale Avenue, Glendale, Arizona, to hear the following:

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING ARTICLE III OF CHAPTER 21 - LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS BY ADDING DEFINITIONS RELEVANT TO BUSINESS LICENSING; ADDING BUSINESS LICENSING REQUIREMENTS; ESTABLISHING A BUSINESS LICENSE FEE; ELIMINATING BUSINESS LICENSE FEE PRORATION; ADDING BUSINESS LICENSING CANCELLATION REQUIREMENTS; ESTABLISHING BUSINESS CEASE AND DESIST ORDER GUIDELINES; ESTABLISHING AN EFFECTIVE DATE; PROVIDING PENALTIES FOR VIOLATIONS; AND PROVIDING FOR SEVERABILITY.

Copies of the proposed ordinance are available for public review at the Glendale City Clerk's Office, 5850 West Glendale Avenue, Fourth Floor, Glendale, Arizona, between the hours of 8:00 a.m. and 5:00 p.m. weekdays. For further information, please call the Revenue Administrator at (623) 930-2595. Interested parties are invited to attend and participate in the public hearing. If you require special accommodations due to a disability, please contact Susan Matousek at (623) 930-2595 or smatousek@glendaleaz.com at least three working days prior to the meeting. Hearing impaired persons should call (623) 930-2197.

CITY OF GLENDALE
Kevin R. Phelps,
City Manager

Publish: The Glendale Star
May 5, 2016

ORDINANCE NO. NEW SERIES

AN ORDINANCE OF THE COUNCIL OF THE CITY OF GLENDALE, MARICOPA COUNTY, ARIZONA, AMENDING ARTICLE III OF CHAPTER 21 - LICENSES, TAXATION AND MISCELLANEOUS BUSINESS REGULATIONS BY ADDING DEFINITIONS RELEVANT TO BUSINESS LICENSING; ADDING BUSINESS LICENSING REQUIREMENTS; ESTABLISHING A BUSINESS LICENSE FEE; ELIMINATING BUSINESS LICENSE FEE PRORATION; ADDING BUSINESS LICENSING CANCELLATION REQUIREMENTS; ESTABLISHING BUSINESS CEASE AND DESIST ORDER GUIDELINES; ESTABLISHING AN EFFECTIVE DATE; PROVIDING PENALTIES FOR VIOLATIONS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING JANUARY 1, 2017 AS THE EFFECTIVE DATE.

WHEREAS, the City Council held a public hearing on May 24, 2016 and considered the required amendments to Article III of Chapter 21 - Licenses, Taxation and Miscellaneous Business Regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF GLENDALE as follows:

SECTION 1. That Glendale City Code, Chapter 21 – Licenses, Taxation and Miscellaneous Business Regulations, Article III, Sections 21-131, 21-132, 21-132.1, 21-133, 21-134, 21-135, 21-136, 21-137, 21-138, 21-139, 21-140, 21-141, and Article III’s title are hereby amended to read as follows:

ARTICLE III. – ~~OCCUPATIONAL CITY BUSINESS~~ LICENSES AND MISCELLANEOUS BUSINESS REGULATIONS

Sec. 21-131. - Definitions.

Business: All activities or acts, either personal or on behalf of a corporate entity, engaged in and caused to be engaged in with the object of gain, benefit, or advantage, either direct or indirect, but not including casual activities or sales.

Engaged in Business: The commencing, conducting, operating, managing or carrying on of a business and the exercise of corporate or franchise powers, whether done as owner, or by means of an officer, agent, manager, employee, servant, or otherwise, whether operating from a fixed location in the City or entering the City from an outside location to engage in such activities, or storing or using tangible personal property in this municipality.

Person: An individual, firm, partnership, joint venture, association, corporation, estate, trust, receiver, syndicate, broker, the Federal Government, the State, or any political subdivision or agency of the State. For the purpose of this Chapter, a person shall be considered a distinct and separate person from any general or limited partnership or joint venture or other association with which such person is affiliated. A subsidiary corporation shall be considered a separate person from its parent corporation for purposes of taxation of transactions with its parent corporation.

Shall: The words “shall,” “will,” and “must” all refer to mandatory actions.

Tax Collector: Means the City Manager or his designee or agent for all purposes under this Chapter.

~~The term "BOP license" shall mean any business, occupational or professional license required under section 21-132.~~

(Ord. No. 1724, § 1, 6-2-92)

Sec. 21-132. – City Business Licenses; required.

- (a) A person before engaging in any business within the City must make application to the Tax Collector for a City Business License and pay the applicable license fee.
- (b) It is unlawful for any person to engage in any business for which a City Business License is required without having first obtained such license.
- (c) A separate City Business License and applicable fees are required for each location of a business, occupation or professional licensed under this article and for each type of business, occupation or profession carried on at a particular location by a licensee.
- (d) Any person found guilty of violating any provisions of this article shall be guilty of a class 1 misdemeanor. Each day that a violation continues shall be a separate offense punishable as hereinabove described.

Section 21-132.1 – City Business Licenses; special requirements.

- (a) Partnerships. Application for a City Business License for a partnership engaging or continuing in business in the city shall provide, as a minimum, the federal identification numbers, names and addresses of all general partners.
- (b) Corporations. Application for a City Business License for a corporation engaging or continuing in business in the city shall provide, as a minimum, the corporation federal identification number, the names and addresses of both the Chief Executive Officer and Chief Financial Officer of the corporation.
- (c) Applications for City Business Licenses may contain other requirements as defined by the Tax Collector.

~~Sec. 21-132~~133. - License required; exemptions.

- ~~(a) All persons engaging in any business, occupation or profession within the city and operating from a regular place of business within the city, except for those persons specified in subsection (b), shall be required to obtain a BOP license pursuant to this article and to pay an annual license fee. A separate license shall be required for each location of a business, occupation or profession licensed under this article and for each type of business, occupation or profession carried on at a particular location by a licensee.~~
- (b) The following persons, when engaging in activities subject to the following licensing provisions, shall not be required to obtain a ~~BOP~~ City Business License:

- (1) Any person licensed pursuant to ~~any other article of this eChapter 21, Article I - Special Regulatory Licenses; Article IV - Occasional Sales; and Article V - Open-Air Markets and Park-and-Swap Operations; or any other provision of this Code;~~
 - (2) Any person licensed by the state pursuant to title 20, Arizona Revised Statutes, as amended;
 - (3) Any participant at an open-air market or park-and-swap operation, if the operator of such market or operation is licensed pursuant to article V of this chapter;
 - (4) Any person who engages in a business, occupation or profession for which a city license is required only as an employee of or as an independent contractor for another person or entity which holds a city license for such business, occupation or profession;
 - (5) Any person who engages in the business activity of leasing, renting or licensing residential real property located within the City;
 - (6) Any other business, occupation or professional exempted by state law.
- (c) ~~It shall be unlawful for any person to engage in any business, occupation or profession for which a BOP license is required without having first obtained such license.~~

(Ord. No. 1724, § 1, 6-2-92; Ord. No. 1837, § 1, 4-11-95; Ord. No. 1919, § 3, 12-10-96)

Sec. 21-~~133~~134. - Application; nonprofit entities.

- (a) An application for a ~~BOP City Business~~ License shall be made on forms furnished by the city.
- (b) Any nonprofit entity which has tax-exempt status under the Internal Revenue Code section 501(c)(3), as certified by the Internal Revenue Service, and which is not exempt from obtaining a ~~BOP City Business~~ License under subsection 21-132(b) is required to obtain a ~~BOP City Business~~ License. Such nonprofit entity shall furnish a copy of its tax-exempt certification with its application, and such entity shall not be charged a license fee.

(Ord. No. 1724, § 1, 6-2-92)

Sec. 21-~~134~~135. - Fees.

~~The license fee to obtain a City Business License is twenty-five dollars (\$25), and the fee is non-refundable. fee for BOP licenses shall be set by resolution. The City Business License fee is valid only for the location identified on the application for the calendar year in which it is issued, unless the license is renewed each year by filing the appropriate application for license renewal and paying an annual license renewal fee of twenty-five dollars (\$25) for each license. The city may set different license fees for an applicant who has not previously been issued a BOP license for the calendar year in which he or she submits an application and for an applicant who has been issued a BOP license for the calendar year in which he or she submits an application and who is required to obtain a new BOP license due to a change in the location of his or her business.~~

(Ord. No. 1724, § 1, 6-2-92)

Sec. 21-~~135~~136. - Issuance; expiration; renewal.

- (a) Any ~~BOP City Business~~ License shall be valid only for the calendar year in which it is issued. Each such ~~BOP City Business~~ License expires on December 31 of each year and must be renewed on or before January 31 of the following year by paying the applicable renewal fee. The renewal fee must be received by the ~~†Tax and~~ License ~~m~~Manager by January 31 to be deemed timely paid.

- (b) — ~~Persons whose initial applications for BOP licenses are received by the city after March 31 of any year shall be subject to an initial license fee on a prorated basis as follows:~~

Business Start Date	Proration of License Fee
April 1 — June 30	75%
July 1 — September 30	50%
October 1 — December 31	25%

~~The applicable proration percentage shall be applied to the annual license fee set by resolution to determine the initial license fee.~~

- (e**b**) Any person who fails to renew a BOP City Business License by January 31 of any year and who conducts any activity covered by such license after such date shall be deemed to be operating without a BOP City Business License, shall be subject to all penalties imposed under this article against persons unlawfully operating without a BOP City Business License, and shall be subject to a penalty of fifty percent (50%) of the annual license fee which would have been imposed on the date on which the BOP City Business License expired in addition to payment of the applicable license fee. All license fees and penalties owed by a person pursuant to this subsection must be paid before a new BOP City Business License is issued to such person. License fee penalties may be waived by the Tax and License Manager subject to the same terms as the waiver of tax penalties as provided for in Chapter 21.1-540.
- (d**c**) Any person who is required to obtain a BOP City Business License and fails to do so prior to conducting any activity covered by such license shall be subject to a penalty of fifty percent (50%) of the annual license fee which would have been imposed on the date on which such activities commenced in addition to payment of the applicable license fee. All license fees and penalties owed by a person pursuant to this subsection must be paid before a new BOP City Business License is issued to such person. License fee penalties may be waived by the Tax and License Manager subject to the same terms as the waiver of tax penalties as provided for in Chapter 21.1-540.
- (d) Any licensee who needs a copy of the City Business License which is still in effect shall be charged the current license fee for each reissuance of a license.

(Ord. No. 1724, § 1, 6-2-92; Ord. No. 1837, § 2, 4-11-95; Ord. No. 1919, § 3, 12-10-96)

Sec. 21-~~136~~137. - Nontransferability.

No BOP City Business License shall be transferable between persons or locations.

(Ord. No. 1724, § 1, 6-2-92)

Sec. 21-~~137~~138. - Display.

The holder of a ~~BOP City Business H~~License shall at all times display his or her license in a conspicuous place at his or her regular place of business within the city.

(Ord. No. 1724, § 1, 6-2-92)

Sec. 21-~~138~~139. - Compliance with other laws.

The issuance of a ~~BOP City Business H~~License by the eCity shall not be construed as authority to engage in any activity which is in violation of any other law or regulation to which such activity is subject, or to conduct activities on any property in violation of the zoning ordinance.

(Ord. No. 1724, § 1, 6-2-92; Ord. No. 1919, § 3, 12-10-96)

Section 21-140 – City Business Licenses; cancellation.

- (a) Falsification of information contained on an application will result in the cancellation of the business license.
- (b) Failure to submit the required transaction privilege tax reports or to pay the required tax, penalty, and interest will result in the cancellation of the business license.
- (c) Failure to pay amounts owed to the city for fees, charges, penalties, interest, or any amounts owed to the city for any reason will result in cancellation of the business license.
- (d) Failure to comply with any statute, regulation, or ordinance, will result in cancellation of the business license.
- (e) To contest a business license cancellation, the licensee must request a hearing within 10 business days of the notice of cancellation. If timely requested, a hearing before the Tax Collector will be held for the purpose of showing cause why the license should not be cancelled. If no such hearing is requested the business license will be cancelled.

Section 21-141 – City Business Licenses; cease and desist orders.

A cease and desist order may be issued if the Tax Collector determines that a person is conducting business without the required business license. Notification will be provided either in person or by certified mail. When a cease and desist order is issued, all business activities must cease immediately until such time as the licensing required by this chapter has been secured. It is unlawful and a violation of this code for any person to engage in any business within the City when a cease and desist order has been issued and business may not commence until the cease and desist order has been lifted by the Tax Collector.

Secs. 21-~~139~~142—21-150. - Reserved.

SECTION 2. This Ordinance's amendment of the Glendale City Code, Chapter 21, Article III shall be effective on January 1, 2017.

SECTION 3. Any person who fails to pay taxes imposed by this code or is found guilty of violating any provisions of the amendments to the tax code is subject to the following penalties:

Sec. 21.1-540. Interest and civil penalties.

(a) Any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay interest upon such tax until paid. From and after October 1, 2005, the interest rate shall be determined in the same manner and at the same times as prescribed by Section 6621 of the United States Internal Revenue Code and compounded annually under the method described in subsection (1) below. The rate of interest for both overpayments and underpayments for all taxpayers is the federal short-term rate, determined pursuant to Section 6621(b) of the Internal Revenue Code, plus three percentage points. The interest rate prior to October 1, 2005 shall be one percent (1%) per month. Said interest may be neither waived by the Tax Collector nor abated by the Hearing Officer except as it might relate to a tax abated as provided by Section 21.1-570.

(1) On January 1 of each year any interest outstanding as of that date that was accrued from and after October 1, 2005 is thereafter considered a part of the principal amount of the tax and accrues interest pursuant to this section.

(2) Interest accrued prior to October 1, 2005 shall not be added to the principal.

(b) In addition to interest assessed under subsection (a) above, any taxpayer who failed to pay any of the taxes imposed by this Chapter which were due or found to be due before the delinquency date shall be subject to and shall pay any or all of the following civil penalties, in addition to any other penalties prescribed by this Chapter:

(1) A taxpayer who fails to timely file a return for a tax imposed by this Chapter shall pay a penalty of five percent (5%) of the tax for each month or fraction of a month elapsing between the delinquency date of the return and the date on which it is filed, unless the taxpayer shows that the failure to timely file is due to reasonable cause and not due to willful neglect. This penalty shall not exceed twenty-five percent (25%) of the tax due.

(2) A taxpayer who fails to pay the tax within the time prescribed shall pay a penalty of ten percent (10%) of the unpaid tax, unless the taxpayer shows that the failure to timely pay is due to reasonable cause and not due to willful neglect. If the taxpayer is also subject to a penalty under subsection (b)(1) above for the same tax period, the total penalties under subsection (b)(1) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

(3) A taxpayer who fails or refuses to file a return within thirty (30) days of having received a written notice and demand from the Tax Collector shall pay a penalty of twenty-five percent (25%) of the tax, unless the taxpayer shows that the failure is due to reasonable cause and not due to willful neglect or the Tax Collector agrees to a longer time period.

(4) If the cause of a tax deficiency is determined by the Tax Collector to be due to negligence, but without regard for intent to defraud, the taxpayer shall pay a penalty of ten percent (10%) of the amount of deficiency. If the taxpayer is also subject to a penalty under subsection (b)(1) or (b)(2) above for the same tax period, the total penalties imposed under subsection (b)(1), (b)(2) and this subsection shall not exceed twenty-five percent (25%) of the tax due.

(5) If the cause of a tax deficiency is determined by the Tax Collector to be due to civil fraud or evasion of the tax, the taxpayer shall pay a penalty of fifty percent (50%) of the amount of deficiency.

(c) Penalties and interest imposed by this Section are due and payable upon notice by the Tax Collector.

(d) If, following an audit, penalties attributable to the audit period are to be assessed pursuant to subsection (b)(1) or (b)(2) above, the Tax Collector, before assessing such penalties, must take into consideration any information or explanations provided by the taxpayer as to why the return was not timely filed and/or the tax was not timely paid. If such information and/or explanations are provided by the taxpayer, and the Tax Collector nevertheless decides to assess penalties pursuant to subsection (b)(1) or (b)(2) above, then, at the time the penalties are assessed, the Tax Collector must provide the taxpayer with a detailed written explanation of the basis for the Tax Collector's determination that the information and/or explanations provided by the taxpayer did not constitute reasonable cause.

(e) The assessment of the penalties prescribed by subsections (b)(3) through (b)(5) above must be approved on a case-by-case basis by the Tax Collector prior to such assessment. In addition, any assessment which includes penalties based upon subsection (b)(3), (b)(4), or (b)(5) above must be accompanied by a statement signed by the Tax Collector setting forth in detail the basis for the Tax Collector's determination that the penalties are warranted under the circumstances.

(f) The Tax Collector shall waive or adjust penalties imposed by subsections (b)(1) and (b)(2) above upon a finding that:

(1) in the past, the taxpayer has consistently filed and paid the taxes imposed by this Chapter in a timely manner; or

(2) the amount of the penalty is greatly disproportionate to the amount of the tax; or

(3) the failure of a taxpayer to file a return and/or pay any tax by the delinquency date was caused by any of the following circumstances which must occur prior to the delinquency date of the return or payment in question:

(A) the return was timely filed but was inadvertently forwarded to another taxing jurisdiction.

(B) erroneous or insufficient information was furnished the taxpayer by the Tax Collector or his employee or agent.

(C) death or serious illness of the taxpayer, member of his immediate family, or the preparer of the reports immediately prior to the due date.

(D) unavoidable absence of the taxpayer immediately prior to the due date.

(E) destruction, by fire or other casualty, of the taxpayer's place of business or records.

(F) prior to the due date, the taxpayer made application for proper forms which could not be furnished in sufficient time to permit a timely filing.

(G) the taxpayer was in the process of pursuing an active protest of the tax in question in another taxing jurisdiction at the time the tax and/or return was due.

(H) the taxpayer establishes through competent evidence that the taxpayer contacted a tax advisor who is competent on the specific tax matter and, after furnishing necessary and relevant information, the taxpayer was incorrectly advised that no tax was owed and/or the filing of a return was not required.

(I) the taxpayer has never been audited by a City for the tax or on the issue in question and relied, in good faith, on a state exemption or interpretation.

(J) the taxpayer can provide some public record (court case, report in a periodical, professional journal or publication, etc.) stating that the transaction is not subject to tax.

(K) the Arizona Department of Revenue, based upon the same facts and circumstances, abated penalties for the same filing period.

A taxpayer may also request a waiver or adjustment of penalty for a reason thought to be equally substantive to those reasons itemized above. All requests for waiver or adjustment of penalty must be in writing and shall contain all pertinent facts and other reliable and substantive evidence to support the request. In all cases, the burden of proof is upon the taxpayer.

(g) No request for waiver of penalty under subsection (f) above may be granted unless written request for waiver is received by the Tax Collector within forty-five (45) days following the imposition of penalty. Any taxpayer aggrieved by the refusal to grant a waiver under subsection (f) above may appeal under the provisions of Section 21.1-570 provided that a petition of appeal or request for an extension is submitted to the Tax Collector within forty-five (45) days of the taxpayer's receipt of notice by the City that waiver has been denied.

(h) For the purpose of this Section, "reasonable cause" shall mean that the taxpayer exercised ordinary business care and prudence, i.e., had a reasonable basis for believing that the tax did not apply to the business activity or the storage or use of the taxpayer's tangible personal property in this City.

(i) For the purpose of this Section, "negligence" shall be characterized chiefly by inadvertence, thoughtlessness, inattention, or the like, rather than an "honest mistake". Examples of negligence include:

- (1) the taxpayer's failure to maintain records in accordance with Article III of this Chapter;
- (2) repeated failures to timely file returns; or
- (3) gross ignorance of the law.

Sec. 21.1-580. Criminal penalties.

(a) It is unlawful for any person to knowingly or willfully:

- (1) fail or refuse to make any return required by this Chapter.
- (2) fail to remit as and when due the full amount of any tax or additional tax or penalty and interest thereon.
- (3) make or cause to be made a false or fraudulent return.
- (4) make or cause to be made a false or fraudulent statement in a return, in written support of a return, or to demonstrate or support entitlement to a deduction, exclusion, or credit or to entitle the person to an allocation or apportionment or receipts subject to tax.
- (5) fail or refuse to permit any lawful examination of any book, account, record, or other memorandum by the Tax Collector.
- (6) fail or refuse to remit any tax collected by such person from his customer to the Tax Collector before the delinquency date next following such collection.

(7) advertise or hold out to the public in any manner, directly or indirectly, that any tax imposed by this Chapter, as provided in this Chapter, is not considered as an element in the price to the consumer.

(8) fail or refuse to obtain a Privilege License or to aid or abet another in any attempt to intentionally refuse to obtain such a license or evade the license fee.

(9) reproduce, forge, falsify, fraudulently obtain or secure, or aid or abet another in any attempt to reproduce, forge, falsify, or fraudulently obtain or secure, an exemption from taxes imposed by this Chapter.

(b) The violation of any provision of subsection (a) above shall constitute a Class One Misdemeanor.

(c) In addition to the foregoing penalties, any person who shall knowingly swear to or verify any false or fraudulent statement, with the intent aforesaid, shall be guilty of the offense of perjury and on conviction thereof shall be punished in the manner provided by law.

SECTION 4. If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

PASSED, ADOPTED AND APPROVED by the Mayor and Council of the City of Glendale, Maricopa County, Arizona, this day of , 2016.

M A Y O R

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

City Attorney

REVIEWED BY:

City Manager
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